No. 17-7505

IN THE

Supreme Court of the United States

VERNON MADISON,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS IN SUPPORT OF RESPONDENT

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The National Association of Police Organizations ("NAPO") is a coalition of police units and associations from across the United States.[1] It was organized for the purpose of advancing the interests of America's law enforcement officers. Founded in 1978, NAPO is the strongest unified voice supporting law enforcement in the country. NAPO represents over 1,000 police units and associations, over 241,000 sworn law enforcement officers, and over 100,000 citizens who share a common dedication to fair and effective law enforcement. NAPO often appears as *amicus curiae* in cases of special importance to the law enforcement community. *E.g.*, *Mullenix v. Luna*, No. 14-1143 (2015); *Arizona v. Gant*, No. 07-542 (2009).

Since its founding, NAPO has had a significant impact on legislation affecting the vital interests of law enforcement officers in the United States. For example, in 2017 and 2018, NAPO endorsed several pieces of legislation in Congress that seek to increase penalties for those who target law enforcement officials, including: the Blue Lives Matter Act, which provides for enhanced federal prosecution against any individual who kills, attempts to kill, assaults, or otherwise inflicts bodily injury against a federally-funded state or local law enforcement officer; the Thin Blue Line Act, which would make a murder victim's status as a state or local law enforcement officer an

1. Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief. Both parties have consented to the filing of this brief.

aggravating factor in death penalty determinations; and the Back the Blue Act, which would increase the penalties for those who harm or target for harm police officers by making the murder or attempted murder of an officer an aggravating factor in death penalty determinations.

NAPO has a powerful interest in this case because it represents law enforcement officers who are not only vital agents of the justice system but are also precisely who Alabama's policy seeks to protect. The murder victim in this case was a police officer, Corporal Julius Schulte. Petitioner Vernon Madison shot Cpl. Schulte in the back of the head simply because he was doing his job—protecting Madison's ex-girlfriend and her daughter from harm. Alabama defines the murder of a police officer as a capital offense. A reversal of the Alabama court would undermine the expressed will of the people of Alabama and create undue risk to their law enforcement officers. Madison's argument—that he should not be held culpable for murdering Cpl. Schulte because he cannot remember killing him—insults the memory of police officers who are killed in the line of duty. NAPO thus writes to urge the Court to affirm.

INTRODUCTION AND SUMMARY OF ARGUMENT

Corporal Julius Schulte faithfully served the people of Mobile County, Alabama for 22 years.[2] Cpl. Schulte spent his entire career with the Mobile Police Department,

2. *See* Kelsey Stein, *Mobile Police Officer Julius Schulte Selflessly Helped City's Youth Before His Death in the Line of Duty*, Ala. Media Group (May 11, 2016), https://bit.ly/2M50zbX.

beginning in the early 1960s and ending when he was fatally shot by Petitioner Vernon Madison on April 18, 1985.

That night, Cpl. Schulte was investigating a report that Cheryl Ann Greene's young child was missing. Cpl. Schulte spoke with Ms. Greene and waited at the house for another officer to arrive. Ms. Greene and Madison, her boyfriend, got in a heated argument while Cpl. Schulte stayed in the car. Cpl. Schulte never threatened Madison and never pulled his gun; instead, he calmly told Madison, "Son, just get your things and go."

According to multiple witnesses Madison pretended to leave, but then retrieved a pistol, crept behind the car where Cpl. Schulte was sitting, and fired two shots into the back of Cpl. Schulte's head. He then turned on Ms. Greene and shot her in the back as she fled. Seconds before backup arrived, Madison fled from the scene.

Suffering two gunshot wounds to the head, Cpl. Schulte died a week later. He received numerous posthumous awards, including a medal of honor from the American Police Hall of Fame, a Medal of Valor from the Exchange Club of Mobile, and a proclamation from both houses of the Alabama Legislature.[3] And his name is engraved on the National Law Enforcement Officers Memorial in Washington DC's Judiciary Square. *See* National Law Enforcement Officers Memorial Fund, Julius Norman Schulte, https://bit.ly/2MokBLz.

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3. Over a quarter-century after his death, Cpl. Julius Schulte still receives well-wishes and reflections from friends and family on his memorial page. ***See Family, Friends & Fellow Officers Remember...***, Officer Down Memorial Page, Corporal Julius Norman Schulte, https://bit.ly/2LXb4ig.

State and federal legislators have recognized the need for criminal codes to include heightened penalties for those who target and kill law enforcement officers. The need for heightened penalties is based on the recognition that our law enforcement officers are placed in harm's way to protect our communities. At the federal level, the murder of federal police officers is already an aggravating factor in death penalty determinations. A strong movement seeks to extend that provision to state and local police officers. And there are new federal legislative efforts to add more protection for police officers against those who seek to harm them.

The movement to protect law enforcement extends well beyond the federal level. Most states still allow the death penalty, and nearly all of those states consider the murder of a police officer as an aggravating factor. Even in those states that have abolished capital punishment, protection of police officers has been a driving force of those seeking to reinstitute the death penalty. The protection of law enforcement via the death penalty receives strong support on both the federal and state levels.

This protection of law enforcement via the treatment of the murder of a police officer as an aggravating factor has been expressly recognized by this Court. The Court has acknowledged the validity of considering the murder of police officers as an aggravating factor in death penalty determinations. It has recognized the special interest that society has in protecting police officers and has noted the legitimate function the death penalty plays in guarding this interest.

Moreover, the death penalty is not merely protective of the nation's officers. Capital punishment is a valid expression of community outrage against violent crimes. As this Court has recognized, the killing of a police officer gives rise to the outrage-based special interest of society. The death penalty plays an important role in avenging the egregious wrongs committed against police officers.

ARGUMENT

I. There Is Nationwide Support for Increased Penalties for the Murder of Law Enforcement Officers.

This Court has recognized the important role of the *people* in determining the appropriate level of punishment under the Eighth Amendment. When a punishment is selected by a democratically elected body, the Court must "presume its validity." *Gregg v. Georgia*, 428 U.S. 153, 175 (1976), The legislatures, not the courts, respond to the will and moral values of the people. *Furman v. Georgia*, 408 U.S. 238, 383 (1972) (Burger, C. J., dissenting). Therefore, the Court's assessment of contemporary standards must give heavy weight to legislative judgment. *Gregg*, 428 U.S. at 175.

When it comes to the punishment of those who kill police officers, the judgment of the people is clear. There is a long tradition of increased penalties for the murder of police officers. This tradition recognizes that, because police officers are routinely involved in dangerous and combustible confrontations, increased penalties are needed to deter violent assaults against them.

Both federal and state law strongly protect police officers. Federal law provides increased penalties for those who murder law enforcement officials. *See* 18 U.S.C. § 3592(c)(14)(D). In determining "whether a sentence of death is justified," the killing of a federal police officer while the officer is performing official duties is considered as an "aggravating factor." *Id.*

There is also strong federal support for *more*—not less—protection for police officers. The United States House of Representatives recently passed the Thin Blue Line Act, which would amend the U.S. criminal code to add the killing of a state or local law enforcement officer as an aggravating factor when determining whether a death sentence is justified. *See* Thin Blue Line Act, H.R. 115, 115th Cong. (2017). The Act has received widespread support from NAPO and others in the law enforcement community, including the National Fraternal Order of Police, the Sergeants Benevolent Association, and the Major County Sheriffs of America. *See NAPO Victory! House Passes Thin Blue Line Act*, The Wash. Rep. (May 22, 2017), https://bit.ly/2n7J5xt. Every advocate cited increased police officer deaths as a reason for their support. *Id.* The Thin Blue Line Act garnered 271 votes in the House of Representatives, boasting bipartisan support and remains pending in the Senate. 163 Cong. Rec. 4341 (2017); The Wash. Rep., *supra*, at 2.

Congress has also sought increased penalties for those who inflict bodily harm on police officers. In May 2018, the House of Representatives passed The Protect and Serve Act of 2018, which is designed to heighten federal punishments for people who knowingly attempt to cause "serious bodily injury" to a law enforcement officer or individual who is perceived as a law enforcement officer.

The Protect and Serve Act of 2018, H.R. 5698 (115th Cong.) (2018). The bill received broad bipartisan support, passing on a vote of 382-35. *See* H.R. 5698—Protect and Serve Act of 2018, Congress.Gov, https://bit.ly/2KvulSd.

As the Bill's co-sponsor, Representative John Rutherford explained, "[s]adly, we've seen a recent rash and an increase in violence against officers especially in ambush-style attacks.... We as members of Congress must show the law enforcement community across this country that we support them and the important work that they do day in and day out. We must also show that those who wish to target police officers with violence that those attacks will not be tolerated." Deborah Barfield Berry, *House Passes Tough Penalties for Those Who Attack, Ambush Law Enforcement Officers*, USA Today, May 17, 2018, https://usat.ly/2M4pKLD.

The bill has received strong support from NAPO and other law-enforcement groups for good reason: There is a serious and growing trend of armed attacks on law enforcement officers. According to a December 2017 report from the Office of Community Oriented Policing Services (COPS) and the National Law Enforcement Officers Memorial Fund, 2016 saw a significant increase in ambush attacks on unsuspecting officers, with 21 officers shot and killed. *See NAPO Victory! House Passes Protect & Serve Act*, NAPO (May 17, 2018), https://bit.ly/2KxgOVB. Of these officers, 61% were not answering a call for service or engaged in enforcement action or performing official duties—they were targeted and killed just for the uniform they wore. *Id.* Twelve officers were murdered sitting in their patrol cars. *Id.* This legislation is evidence of a focused federal initiative to protect police officers across the nation.

States similarly protect law enforcement officers. All 50 states have laws in place that enhance penalties for crimes against law enforcement officers, and in some instances, crimes against a broadly defined category of first responders. *See* Protect and Serve Act of 2018, H. Rep. 115-672 at 8 (May 11, 2018). In 28 out of the 31 states that employ the death penalty, the capital statute either specifically indicates that killing a law enforcement officer or peace officer is an aggravating factor that would make the defendant eligible for the death penalty or defines the act itself as a capital or capital-eligible offense.[4] The remaining three identify the targeting of a police officer while evading arrest as an aggravating factor that would make the defendant eligible for the death penalty.[5]

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4. Ala. Code § 13A-5-40(a)(5) (2016); Ariz. Rev. Stat. Ann. § 13-751(F)(10) (2010); Ark. Code Ann. § 5-10-101(a)(3) (West 2008); Cal. Penal Code §190.2(a)(7) (West 2014); Colo. Rev. Stat. Ann. § 18-13-1201(5)(c)(I) (West 2013); Fla. Stat. § 921.141(6)(j) (2016); Ga. Code Ann. § 17-10-30(b)(8) (West 2014); Idaho Code §§ 18-4003(b), -4004 (2017); Ind. Code § 35-50-2-9(b)(6) (2016); Ky. Rev. Stat. Ann. § 532.025(2)(a)(7) (2017); La. Stat. Ann. § 14:30(a)(2), (C)(1) (2016); Miss. Code Ann. § 97-3-19(2)(a) (2017); Mont. Code Ann. § 46-18-303(1)(b) (2017); Mo. Rev. Stat. § 565.032(2)(5) (2016); Neb. Rev. Stat. § 29-2523(1), (g)-(i) (2016); Nev. Rev. Stat. § 200.033(7) (2015); N.H. Rev. Stat. Ann. § 630:1(I)(a) (2016); N.C. Gen. Stat. § 15A-2000(e)(8) (2017); Okla. Stat. tit. 21, §§ 701.9(a), 701.12(8) (2017); Or. Rev. Stat. § 163.095(2)(a) (2015); 42 Pa. Cons. Stat. § 9711(d)(1) (2016); S.C. Code Ann. § 16-3-20(C)(a)(7) (2017); S.D. Codified Laws § 23A-27A-1(7) (2017); Tenn. Code Ann. § 39-13-204(i)(9) (2017); Tex. Penal Code Ann. § 19.03(a)(1) (2017); Utah Code Ann. § 76-5-202(1)(n)(3) (West 2017); Va. Code § 18.2-31(6) (2017); Wash. Rev. Code § 10.95-020(1) (2016).

5. Kan. Stat. Ann. § 21-6624(e) (2016); Ohio Rev. Code Ann. § 2929.04(A)(3) (West 2016); Wyo. Stat. Ann. § 6-2-102(h)(v) (2017).

Like the federal government, state governments continue to seek more protections for police officers. For example, on February 2, 2017, the Georgia Senate adopted a resolution encouraging district attorneys to seek the death penalty against defendants accused of murdering law enforcement officers. S.R. 140, 154th Gen. Assemb., Reg. Sess., (Ga. 2017). The resolution recognized the "great personal sacrifice and risk to their own lives and well-being" that law enforcement officers face. *Id.* Moreover, "the offense of murder against a law enforcement officer is an offense that impacts the safety of the citizens of this state." *Id.* A month later, Utah enacted a law classifying the murder of a law enforcement officer as "aggravated murder." H.B. 433, 2017 Gen. Sess. (Ut. 2017); *see* Utah Code Ann. § 76-5-202(1)(n)(3) (West 2017). These recent enactments reflect the continued commitment to protect law enforcement officers through capital statutes.

Even in states that have abolished capital punishment, the killing of law enforcement officers often ignites calls for reinstating the death penalty. For example, many in Massachusetts are seeking to reimpose the death penalty after a police officer was killed.[6] Steve LeBlanc, *Police Officer Murder Renews Calls for Death Penalty in Massachusetts*, CBS Boston (Apr. 18, 2018), https://cbsloc.al/2OPrSpl. Illinois Governor Bruce Rauner is similarly seeking to reinstate the death penalty for individuals who kill law enforcement officers.[7] Mark Berman, *Illinois*

6. The Massachusetts Supreme Judicial Court ruled in 1984 that imposing a death penalty by jury trial in violation of state law was unconstitutional. *Commonwealth v. Colon-Cruz*, 470 N.E.2d 116, 134 (Mass. 1984).

7. The Illinois legislature abolished the death penalty in 2011. 725 Ill. Comp. Stat. Ann. 5/119-1 (West 2011).

Governor Wants the State to Revise Its Death Penalty for Mass Murderers and People Who Kill Police, Wash. Post (May 14, 2018), https://wapo.st/2niE5q0. Capital punishment for those who kill police officers is a significant justification for the death penalty on the state level. Clearly, then, the people of our nation believe that the murder of a law enforcement officer warrants increased penalties.

II. The Death Penalty Serves an Important Function as an Expression of Community Outrage Against the Murder of Police Officers.

Petitioner seeks a nullification of his death sentence on the basis that he (allegedly) can no longer remember his crime or victim. But a primary purpose of capital punishment is to express community outrage over a murder. That goal has nothing to do with whether the defendant remembers his victim or his crime. The community's memory—including the law enforcement community's memory—is what matters.

This Court has long recognized the critical role that the death penalty plays in expressing society's abhorrence for heinous offenses. "[C]apital punishment is an expression of society's moral outrage at particularly offensive conduct." *Gregg*, 428 U.S. at 183. "This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs." *Id.* "When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they 'deserve,' then there are sown the seeds of anarchy of self-help, vigilante justice, and lynch

law." *Id.* (quoting *Furman*, 408 U.S. at 308 (Stewart, J., concurring)).

The objective indicia to which this Court looks plainly supports the death penalty in these types of cases. Society still supports applying the death penalty as a measure for unifying communities in response to crimes that they find particularly threatening to the functioning of society. Donald L. Beschle, *Why do People Support Capital Punishment? The Death Penalty as Community Ritual*, 33 Conn. L. Rev. 765, 774-75 (2001). A full 55% of American adults say they support the death penalty, despite this being the lowest since 1972. Jeffrey M. Jones, *U.S. Death Penalty Support Lowest Since 1972*, Gallup (Oct. 26, 2017), https://bit.ly/2Kyc1Ij.

Federal and state laws similarly recognize the role of the death penalty in expressing the community's moral outrage. For example, one of the "most ubiquitous aggravating factors" in considering whether the defendant is death penalty-eligible is whether the crime was committed in "'an especially heinous, cruel, or depraved manner.'" Sam Kamin & Justin Marceau, *Vicarious Aggravators*, 65 Fla. L. Rev. 769, 789 (2013) (quoting Colo. Rev. Stat. § 18-1.3-1201). Virginia, for example, which only has two death-qualifying factors, recognizes a killing that was "outrageously or wantonly vile" as deserving of the death penalty. *Id.* at 790 (quoting Va. Code § 19.2-264.2). Both this Court and many states recognize that the moral voice of the community must be permitted to speak.

The function of the death penalty as an expression of society's outrage is an overlooked aspect of capital punishment. Nonetheless, Supreme Court precedent

requires an analysis of society's moral standards of punishment. Where the utilitarian and retributive justifications of the death penalty are deeply contested, this is a vital task. The standards of the community are clear: the death penalty is an appropriate punishment, particularly for those who kill police officers.

Imposition of the death penalty requires weighing the aggravating and mitigating factors. The legislatures, courts, and communities across the United States agree that the killing of a police officer should receive significant weight in these determinations.

* * *

One of the primary ways the law enforcement community remembers the murder of police officers is through the National Law Enforcement Officers Memorial. The Memorial, located in Washington, D.C., honors federal, state and local law enforcement officers who have made the ultimate sacrifice for the safety and protection of our nation and its people. The Memorial features two curving, 304-foot-long blue-gray marble walls. Carved on these walls are the names of more than 21,000 officers who have been killed in the line of duty throughout U.S. history, dating back to the first known death in 1791. Unlike many other memorials in Washington, D.C., the National Law Enforcement Officers Memorial is ever-changing: new names of fallen officers are added to the monument each spring, in conjunction with National Police Week. *See* National Law Enforcement Officers Memorial Fund, https://bit.ly/2OdKaPR.

On the west wall of the memorial, surrounded by the names of thousands of other fallen police officers, is the name Julius N. Schulte. Whether Madison remembers it or not, Cpl. Schulte's name is there because Madison shot him twice in the back of the head more than thirty years ago. It would be deeply insulting to the law enforcement community for the Court to declare that Cpl. Schulte's murderer is less culpable now because he can no longer remember the victim of his crime.

CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that this court affirm the judgment of the Alabama court.

Respectfully submitted,

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